

**RESOLUTION NO. #####**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF NEWPORT BEACH APPROVING VARIANCE NO.  
VA2012-001 FOR AN ADDITION TO A SINGLE-FAMILY  
RESIDENCE LOCATED AT 245 EVENING CANYON ROAD  
(PA2012-027).**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS  
FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by Daniel Kashani representing the property owner, Cornerstone Securities, LLC, with respect to property located at 245 Evening Canyon Road, and legally described as Lot 132 of Tract 1116, in the City of Newport Beach, County of Orange, State of California, as per map recorded in book 36, pages 19-20, inclusive of miscellaneous maps, in the office of the County Recorder of said County requesting approval of a variance.
2. The applicant requests a variance to allow a 2,000-square-foot addition to an existing 2,757-square-foot nonconforming single-family residence. The structure is nonconforming because the existing residence encroaches between seven and 11 inches into the required 6-foot southwesterly side yard setback. A variance is requested to allow a 73 percent addition and a second floor addition that would project into the southerly side yard setback, in-line with the existing nonconforming residence.
3. The approval of the variance to allow the 5-foot 1-inch side yard setback at the southwesterly side yard no longer renders the existing structure nonconforming. Therefore, an additional variance for the size of the addition to the existing structure is not required.
4. The subject property is located within the R-1-6,000 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single-Unit Residential Detached).
6. A public hearing was held on May 3, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. At the May 3, 2012, Planning Commission Meeting, the Planning Commission took action to continue this item to the June 7, 2012, Planning Commission Meeting to comply with the noticing provisions of the NBMC. However, a public notice had already been mailed out for the May 17, 2012, Planning Commission Meeting. Therefore, at the May 17, 2012, meeting, the Planning Commission again continued the item to the June 7, 2012, Planning Commission meeting agenda.

7. A public hearing was held on June 7, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines – New Construction or Conversion of Small Structures).
2. The Class 3 exemption includes the construction of one single-family residence. The proposed development involves an addition to an existing single-family residence. Therefore, the proposed project qualifies for an exemption under Class 3.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.090.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of a variance are set forth:

### Finding:

- A. *That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

### Facts in Support of Finding:

- A-1. The existing lot is 55 feet in width and the current zoning code requires 6-foot side yard setback areas. The lot was permitted to be developed with a single-family residence with a side yard setback equal to 10 percent of the lot width in 1952, consistent with the Zoning provisions at that time. Therefore, the structure is considered legal nonconforming.
- A-2. The property is adjacent to Buck Gully and is subject to primary and accessory structure development string lines which limit construction further down the slope and limits the depth of the developable area. Development further down the slope is limited and compliance with the setback requirements would require significant additional alterations at the entry level of the existing structure beyond the proposed scope of work.
- A-3. Strict application of the setback standard would not allow the exterior wall of the proposed addition to be supported by the existing building wall and foundation directly below. From a structural standpoint, additional framing and foundation elements would be necessary to properly support the addition in compliance with the required

setbacks. The walls and foundation below would need to be completely reconstructed or replaced, which is a significant departure from the desired scope of construction. Additions and two-story construction are allowed on any R-1-6,000 designated property by the Zoning Ordinance and approval of the Variance is necessary to preserve that right without significant added construction and cost to comply with the setback standard.

Finding:

- B. *That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

- B-1. The previous Zoning Code allowed properties within this zone to construct additions in-line with the existing structure by right. The current Zoning Code does not provide a provision that allows additions in-line with existing nonconforming structures that project into the side yard setback within the R-1-6,000 zoning district.
- B-2. Strict application of the setback standard would not allow the exterior wall of the proposed addition to be supported by the existing building wall and foundation directly below. From a structural standpoint, additional framing and foundation elements would be necessary to properly support the addition in compliance with the required setbacks. The walls and foundation below would need to be completely reconstructed or replaced, which is a significant departure from the desired scope of construction. Additions and two-story construction are allowed on any R-1-6,000 designated property by the Zoning Ordinance and approval of the Variance is necessary to preserve that right without significant added construction and cost to comply with the setback standard.
- B-3. The approval of the variance to allow the 5-foot 1-inch side yard setback at the southwesterly side yard no longer renders the existing structure nonconforming. Therefore, an additional variance for the size of the addition to the existing structure is not required.

Finding:

- C. *That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

- C-1. Strict compliance with the side yard setback standard given the unique circumstances identified in the facts significantly limits the ability of the property owner to create a two-story home thereby depriving a substantial property right afforded by other R-1-6,000 lots in the Shore Cliffs Community.

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

**PLANNING**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Variance No. VA2012-001 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Variance.
5. This Variance may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
6. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Variance file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Variance and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
7. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
8. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.